In the High Court of Uttaranchal, at Nainital.
A.O. No. 913/2001
(Old no. 174/1988)

Badri Datt Sharma S/o Bala Datt Sharma
R/o Ward No. 2, Tanakpur
District Nainital ...Appellant.

Versus

1- Rakesh Kumar Sinha S/o Mahesh Chandra Sinha, C/o Raja Transport Co. Kichha, District Nainital.
2- New India Assurance Co. Ltd. .. Respondents.

Sri I.D. Paliwal, learned counsel for the appellant.
Sri M.K. Goel, learned counsel for the respondent/Insurance Co.

Hon'ble B.C. Kandpal, J:

This appeal U/S 110-D of the Motor Vehicles Act, has been filed by the owner of Truck, bearing registration USR 4111, for enhancement of the amount of compensation awarded by the Tribunal vide judgment and order 4-11-1987.

2- Brief facts of the case are that the claimant/appellant is the owner of the truck No. USR 4111. On 30-5-1983 at about 11 A.M. the truck of the claimant lodaded with stones was coming from Khatima towards Sitarganj at a very low speed and on its left side, truck No. URS 30, owned by Opposite Party No. 1, and insured by Opposite Party No.2, was coming from the opposite side, at a great speed and it was being driven rashly by its driver. The truck No. URS 30 dashed with the truck of claimant causing injury to the driver and damaging the truck of claimant badly. The claimant suffered a loss of Rs. 68,343/- on account of damage of the truck and he is entitled to recover that amount from the opposite parties as compensation.

3- The Opposite Party No.1, owner of truck No. USR 30, filed written statement and denied the claimant's case. He alleged that the accident was not caused due to the rash and negligent driving of driver of Vehicle No. URS 30 but the accident was caused due to the rash and negligent driving of Vehicle No. USR 4111. Deokinandan, the driver of Truck NO. USR 4111, was driving its truck rashly and negligently and caused damages to his truck. The claimant is entitled to receive compensation from the insurer of his own truck and his truck was insured with New India Assurance Company, Civil Lines Bareilly.

4- The New India Assurance Company filed written statement, in which he denied the claimant's case and claimed that the claimant is put to strict proof of the facts alleged by him. It was also alleged that the conditions of the insurance policy with regard to the limitation of the use of the vehicle were violated and it is only liable to indemnify to the person insured and to non else.

5- On the basis of the pleadings of the parties, the following issues were framed:-

1- Whether the accident occurred on account of negligence on the part of the driver of Truck No. URW 30?.

2- To what compensation, if any, is the claimant entitled?.

6- The parties in support of their case filed the evidence. Thereafter the Tribunal held that both the vehicles involved in the accident were equally responsible. The Tribunal also calculated the amount of compensation as Rs. 34,574/- and further observed that the claimant would not be entitled for the half of the

compensation on account of the reason that he was also found equally responsible in the accident.

7- Feeling aggrieved by the aforesaid judgment and award, the appeal has been preferred before the Allahabad High Court, which has been transferred to this court, after creation of the separate State.

8- Heard the learned counsel for the parties and perused the record.

9- The claimant/appellant examined four witnesses. Out of these witnesses, P.W.4, Nityanand Bhatt, is the witness who was present in the truck belonging to the claimant/appellant at the time of the accident. This witness was sitting by the side of the driver of the truck. The case of the claimant/appellant is that the driver of the truck was Deokinandan at the time of the accident, but Deokinandan has not been produced before the court below. The testimony of the witness P.W.4, Nityanand Bhatt was found to be doubtful by the Tribunal concerned on the ground that in the first information report, lodged by the driver Deokinandan, the name of Nityanand Bhatt P.W.4, does not find place anywhere.

10- As far as the apportionment of the rash and negligence on the part of the trucks concerned, the court below has relied upon the dictum of '*res ipsa loquitur*' The circumstances of the case are very clear that both trucks were going opposite to each other at the time of the accident and the drivers of both the trucks had sufficient opportunity to avoid the accident. Had the drivers of the trucks been vigilant, they would have avoided the accident. The Tribunal is perfectly justified in holding that the drivers of both the offending trucks are

equally responsible for their rash and negligence in this accident.

11- As far as the amount of damages is concerned, it is evident from the evidence of P.W.1, claimant/appellant, P.W.2, Diwan Singh and P.W.3, Pravin Kumar, that all these witnesses could not establish as to what was the market-value of the truck involved in the accident. P.W.3, Pravin Kumar has given the estimate of Rs. 42,173/- and in that estimate the value of the chesis has been mentioned as Rs. 15,000/-. The court below has taken this aspect into consideration that the chasis was quite old and after calculation the amount of damages came to Rs. 34,573=90P. rounded to Rs. 34,574/-.

12- As both the trucks in question were held responsible equally for causing the accident, therefore, the claimant/appellant has been rightly awarded half of the damages calculated by the Tribunal, which comes to Rs. 17,287/-.

13- I do not find any infirmity in the impugned judgment and award passed by the Tribunal concerned.

14- On the basis of the assessment of evidence on record, I am of the positive view that the appeal is liable to be dismissed.

15- Accordingly the appeal is dismissed. No order as to costs.

(B.C.Kandpal, J.)

Dated: 27-09-2006
ISB